

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award by the ALJ should be affirmed. With a single caveat, the Appeals Board agrees with and adopts as its own the findings of fact and conclusions of law stated in the Award. Specifically, the Appeals Board agrees that the award must be limited to functional impairment because the claimant has refused an offer of accommodated employment at a wage which would have been 90 percent or greater than his preinjury wage. *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). The Appeals Board also agrees with and affirms the conclusion that the compensable impairment is 13 percent of the body as a whole.

The ALJ gives a second reason for limiting the award to functional impairment. She concludes that the award should be limited to functional impairment because claimant has not made a good faith effort to find other employment after leaving his employment with respondent. The ALJ cites, in support, *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997). The Appeals Board agrees that claimant has not made a good faith effort to find other employment. But, the Board does not agree that this conclusion alone would necessarily limit the claimant to an award based upon functional impairment. When the claimant has not made a good faith effort to find other employment, a wage must be imputed based upon relevant factors, including testimony by vocational experts. The award should be limited to functional impairment only if the imputed wage is at least 90 percent of the preinjury wage.

The evidence in this case suggests that, absent the employment offer from respondent, claimant was not likely to earn 90 percent of his preinjury wage. His preinjury base wage alone was \$702 per week. Absent the offer of employment by respondent at a comparable wage, and claimant's refusal thereof, claimant might be entitled to a work disability with a wage loss factor based upon an imputed wage. To the extent that the conclusions by the ALJ suggest to the contrary, the Board would disagree with that single conclusion.

Except as stated above, the Appeals Board fully agrees with, and adopts as its own, the findings and conclusions as stated in the Award. On that basis, the Appeals Board finds and concludes that the Award should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample on March 23, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Davy C. Walker, Kansas City, KS
C. Anderson Russell, Kansas City, MO
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director